

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0169
Sales/Use Tax
For the Years 1998-2000**

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ISSUE

I. Sales and Use Tax- Tanning Beds

Authority: IC 6-8.1-5-1 (b), IC 6-2.5-2-1, IC 6-2.5-3-2.

The taxpayer protests the assessment of use tax on certain tanning beds.

II. Sales and Use Tax-Sign

Authority: IC 6-2.5-3-2, IC 6-8.1-5-1 (b).

The taxpayer protests the tax assessed on a sign.

III. Sales and Use Tax- Miscellaneous Expenditure

Authority: IC 6-2.5-3-2, IC 6-8.1-5-1 (b).

The taxpayer protests the assessment of tax on a miscellaneous expenditure.

STATEMENT OF FACTS

The taxpayer is a tanning salon. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use tax on the taxpayer. The taxpayer protested several assessments. The issues concerning the sales tax assessments for July 1999, October 2000, November 2000 and December 2000 were resolved prior to hearing. At the telephone hearing, the taxpayer protested three assessments.

I. Sales and Use Tax- Tanning Beds

DISCUSSION

The taxpayer protests the assessment of use tax on two tanning beds listed on page 18 of the audit as Asset #84 and Asset #85. The taxpayer considered this transaction a non-taxable profit sharing contract. The department considered this transaction a purchase subject to the use tax.

The department's auditor examined the documentation surrounding the taxpayer's payment. All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b). Although given ample opportunity, the taxpayer did not provide any documentation to substantiate its opinion that the transaction constituted a profit sharing agreement. Therefore, the taxpayer did not sustain its burden of proving that the transaction constituted a profit sharing plan.

Indiana imposes a sales tax on retail transactions made in Indiana. IC 6-2.5-2-1. A complementary use tax is imposed on personal property purchased in a retail transaction and used in Indiana when no sales tax has been paid. IC 6-2.5-3-2. The subject transaction was subject to the use tax.

FINDING

The taxpayer's protest is denied.

II. Sales and Use Tax-Sign

DISCUSSION

In 2000, the taxpayer purchased a sign to advertise its business. No sales tax was collected or remitted on the sale of this sign. Therefore, the department assessed the complementary use tax pursuant to IC 6-2.5-3-2. The taxpayer contends that the payment was actually for a non-taxable intangible "right" to use the sign. The taxpayer did not present any documentation before, during, or after the hearing to substantiate its contention. Therefore, pursuant to IC 6-8.1-5-1 (b), the taxpayer did not sustain its burden to prove that the department made an incorrect assessment

FINDING

The taxpayer's protest is denied.

III. Sales and Use Tax- Miscellaneous Expenditure

DISCUSSION

The department assessed use tax based upon the November 15, 1998 check # 7854 for which no detail was provided pursuant to IC 6-2.5-3-2. The taxpayer contends that this check was written to make a non-taxable payment for a bank loan rather than the taxable purchase and use of tangible personal property. The taxpayer did not offer any evidence to substantiate its

contention. Pursuant to IC 6-8.1-5-1 (b) the taxpayer did not sustain its burden of proof that the use tax was improperly imposed.

Finding

The taxpayer's protest is denied.

KMA/JMM/MR--031505